

SN. 09/778,993

ATTORNEY DOCKET NO. CANO:019

REMARKS

Applicants provisionally elect group I directed to claims 1-5, 14-18, and 27, with TRAVERSE because groups I-IV identified by the examiner are not species.

First, the examiner essentially categorized the claims directed to an image forming device or a control method thereof as alternative species solely based on the Summary of the Invention, which is a summary of the claims. The examiner thus based the species requirement solely on the claims rather than basing on the entire disclosure. Note that the claims themselves are never species. See MPEP § 806.04(e). Applicants submit that requiring an election of species based only on the Summary of the Invention is improper since it does not fully reflect the entire disclosure. Should the examiner wish to restrict based on species, the examiner is urged to properly issue species restriction based on the illustrated embodiment(s), namely the figures, since all claimed elements must be illustrated. Here, the drawings illustrate a single embodiment.

Second, as set forth in MPEP § 806.04(f), restriction based on species can be applied only if the species are mutually exclusive. Different species are mutually exclusive if one claim recites a limitation that is found in the first species but not in a second, while a second claim recites a limitation found only in the second species and not in the first species. Here, the features identified in the four groups I-IV are not mutually exclusive, as grouped by the examiner, because they can be included in each of the groups. For example, the difference between claim 1 and claim 6, for example, is that claim 6 further calls for "interrupting means," further defines that the discharge means is operable "after the apparatus has recovered from the interruption by removing at least one jammed insert sheet," and further calls for "discharging insert sheets onto the escape tray up to an insert sheet immediately preceding a same type of insert sheet as the at least one jammed insert sheet." These additional limitations in claim 6 are essentially further limitations of the invention set forth in claim 1. Since the features set forth in claims 1 and 6 are not mutually exclusive, they cannot be categorized as species.

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Conclusion

At least for the foregoing reasons, applicants urge the examiner to at least examine groups I and II together, namely claims 1-10, 14-23, 27, and 42. Alternatively, if the examiner is to require restriction, the examiner should properly restrict the claims based on the groupings as set forth in MPEP § 806.05.

Respectfully submitted,

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